

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

04-CR-67

GREGORY M. ROSE,

Defendant,

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

Presently before the Court is Defendant Gregory M. Rose's motion to dismiss certain counts of the Second Superseding Indictment as in violation of the Double Jeopardy Clause of the Constitution.

For the reasons stated in the Court's prior Decision & Order in this matter, see Dkt. No. 99, and this Court's decisions in United States v. Parker, 3:04-cr-495, Dkt Nos. 93 and 103, the Court finds that, when linked to a single crime, a "possession" of a firearm count and a "use and carrying" of a firearm count are multiplicitous. To satisfy the Double Jeopardy Clause, one of the counts must be dismissed.

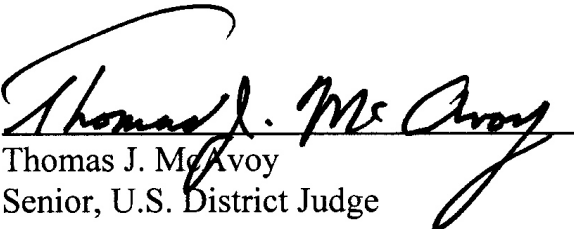
In this case, Counts Three (Use of a Firearm) and Four

(Possession of a Firearm) of the Second Superseding Indictment relate to the same Count Two bank robbery. Because one of the counts must be dismissed, Count Four is hereby dismissed. Similarly, Counts Six and Seven relate to the same Count Five bank robbery. Thus, Count Seven is hereby dismissed. Counts Nine and Ten relate to the same Count Eight bank robbery. Accordingly, Count Ten is hereby dismissed. Lastly, Counts Twelve and Thirteen relate to the same Count Eleven bank robbery. Count Thirteen is, therefore, dismissed.

For the foregoing reasons, Counts Four, Seven, Ten, and Thirteen are DISMISSED.

IT IS SO ORDERED.

Dated: August 16, 2005



Thomas J. McAvoy
Senior, U.S. District Judge